

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAYMZ CARRIS, KIMBERLIE
CARRIS, and TREVOR CARRIS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RAEMONDA CARRIS,

Respondent-Appellant,

and

JIM ROGERS, LARRY HULL and JACK
CHOATE, III,

Respondents.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LARRY VERNE HULL,

Respondent-Appellant,

and

UNPUBLISHED

December 19, 1997

No. 201564

Jackson Juvenile Court

LC No. 96-018762 NA

No. 201761

Jackson Juvenile Court

LC No. 96-018762 NA

RAEMONDA CARRIS, JIM ROGERS and JACK
CHOATE, III,

Respondents.

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

PER CURIAM.

In Docket No. 201564, respondent Raemonda Carris (respondent-mother) appeals as of right from the juvenile court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). In Docket No. 201761, respondent Larry Hull (respondent-father) appeals as of right from the juvenile court order terminating his parental rights to Trevor Carris under MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (h); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (g) and (h). We affirm in both cases. This case is being decided without oral argument pursuant to MCR 7.214(E).

With regard to respondent-mother, the juvenile court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Hall-Smith*, 222 Mich App 470, 471-473; 564 NW2d 156 (1997). Termination of respondent-mother's rights was appropriate under § 3(c)(i) because she failed to participate in therapy that was necessary to enable her to provide proper care for the children. Respondent-mother was not required to have custody of the children in order for the court to find that the conditions that caused the court to assume jurisdiction continued to exist and that there was no reasonable likelihood that the conditions would be rectified within a reasonable amount of time.

Termination of respondent-mother's rights was also appropriate under §§ 3(g) and (j) given that she had neglected the children in their emotional, medical, and educational needs. Because she did not complete the goals of her treatment plan, it was likely that the children would be harmed or neglected in the future if returned to her care. Furthermore, respondent-mother was provided with adequate services by petitioner to assist her in working to regain custody of the children, but she either failed to take advantage of the services offered or failed to show the necessary improvement in her parenting skills. She was also given adequate time to work on the goals of her treatment plan.

Respondent-mother also argues that the juvenile court improperly shifted the burden of proof onto her to establish what was in the children's best interests. We disagree. The juvenile court only noted the absence of evidence produced by respondent-mother that termination was clearly not in the children's best interests. The court then had a mandatory duty to terminate respondent-mother's rights since she did not rebut the statutory presumption found at MCL 712A.19b(5); MSA 27.3178(598.19b)(5). *In re Hall-Smith*, *supra* at 472-473. This procedure

did not involve a shifting in the burden of proof, but only in the burden of production. *In re Hamlet*, ___ Mich App ___; ___ NW2d ___ (Docket No. 198096, issued 9/26/97, slip op at 19-22).

With regard to respondent-father's rights, the juvenile court did not clearly err in terminating his rights under § 3(h) because he was incarcerated and not eligible for parole for at least two years. While incarcerated, respondent-father failed to provide a viable plan for the child's care. While he offered his relatives as a possible placement at the termination hearing, there was no evidence that his relatives would have agreed to care for the child. The juvenile court was not required to place the child with a relative. *People v McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

Similarly, respondent-father's failure to provide for the child's care in the past and his incarceration supported termination of his rights under §§ 3(g) and (c)(i). *In re Jackson*, 199 Mich App 22, 25-26; 501 NW2d 182 (1993); *In re Systma*, 197 Mich App 453, 457; 495 NW2d 804 (1992). Termination of respondent-father's rights was appropriate under § 3(a)(ii) because he had not sought custody of the child for at least ninety-one days before he wrote to the court in November 1996 regarding Trevor. *In re Mayfield*, 198 Mich App 226, 230, 235; 497 NW2d 578 (1993).

Respondent-father also argues that the juvenile court erred in terminating his parental rights when he was not offered services by petitioner and, therefore, could not complete a court-ordered plan for treatment. Respondent-father was not offered services as a result of his incarceration and his lack of involvement with his child. His rights were not terminated for the reason that he did not seek treatment or complete a court-ordered treatment plan. We, therefore, do not find error with the juvenile court's decision to terminate respondent-father's parental rights. The caseworker was not required to observe respondent-father with the child to assess his fitness as a parent since the facts of this case did not involve a question over the quality of respondent-father's care, but rather his failure to provide any care or support for the child.

Respondent-father also argues that the juvenile court erred in finding that termination of his rights was in the child's best interests. The juvenile court's findings were not clearly erroneous. *In re Hall-Smith, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Stephen J. Markman
/s/ William C. Whitbeck